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Raymond R. Hornback JR.

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EXAMINER

LIU, LIN

ART UNIT

PAPER NUMBER

2145

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,316	Applicant(s) HORNBACK ET AL.	
	Examiner LIN LIU	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to communications filed on 09/08/2008.

Claims 1-9 and 15-17 are pending and have been examined.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5 and 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by **Simpson et al. (PGPUB: US 2004/0073632)**.

With respect to **claim 1**, Simpson teaches a method for configuring and dynamically adapting an application sharing system comprising a plurality of computers in communication over a network, one of the computers having a plurality of system components and sharing an application with at least one other computer over the network, one of the system components adapted to provide feedback to the shared application, the method comprising:

determining a preference for the shared application (Simpson: page 4, paragraph 49, noted the user's unique information for the design data);

monitoring a feedback generated by the one of the system components (Simpson: page 4, paragraph 49, noted that the Unix system automatically creates and stores a target image); and

configuring one of the system components in response to the determined preference and the monitored feedback (Simpson: page 4, paragraph 50, noted that the target image 28 is stored on the client machine).

With respect to **claim 2**, Simpson teaches the method of claim 1 wherein the system component comprises one of a compression algorithm, a change detection algorithm, a screen capture device and a data transport type (Simpson: page 6, paragraph 63).

With respect to **claim 3**, Simpson teaches the method of claim 1 wherein the preference is a user preference (Simpson: page 4, paragraph 49, noted the user's unique information for the design data).

With respect to **claim 4**, Simpson teaches the method of claim 3 wherein the user preference defines at least one of an image quality and a latency (Simpson: page 4, paragraphs 50-51).

With respect to **claim 5**, Simpson teaches the method of claim 3 wherein the user preference defines at least one of a CPU usage and a fidelity (Simpson: page 4, paragraphs 50-51).

With respect to **claims 15-16** the limitations of these claims are substantially the same as those in claims 1-2. Therefore the same rationale for rejecting claims 1-2 is used to reject claims 15-16. By this rationale **claims 15-16** are rejected.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-5, 9 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Popa (Patent no.: US 6,006,231)** in view of **Bertram et al. (PGPUB: US 2002/0156884 A1)**.

With respect to **claim 1**, Popa teaches a method for configuring and dynamically adapting an application sharing system (Popa, fig. 3) comprising a plurality of computers in communication over a network, one of the computers having a plurality of system components and sharing an application with at least one other computer over the network, one of the system components adapted to provide feedback to the shared application, the method comprising:

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determining a preference for the shared application (Popa, col. 5, lines 59-61, and line 66 to col. 6 line 6, noted that user selects the size and resolution of the image);

monitoring a feedback from the one of the system components (Popa, col. 5, lines 50-55, and col. 6, lines 7-20, noted that the server application monitors the request message from the client, and the preference of the image size and resolution picked by the user); and

configuring one of the system components in response to the determined preference and the monitored feedback (Popa col. 6, lines 14-30, noted that based on the alteration of the user's choice, server application configures its setting by transferring the difference between the high resolution image and the original image).

However, Popa does not explicitly teach a method of generating a feedback by the one of the system components.

In the same field of endeavor, Bertram teaches a method of generating a feedback by the one of the system components (Bertram: fig. 2 & 5, page 4, paragraphs 27-28, noted the server monitors the CPU usage and generates the performance data).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of monitoring the CPU usage by the server as taught by Bertram in Popa's invention in order for the server to track the usage of CPU and monitor any abnormal activities.

With respect to **claim 2**, Popa teaches the method of claim 1 wherein the system component comprises one of a compression algorithm (Popa, col. 6, lines 38-44), a

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change detection algorithm, a screen capture device and a data transport type (Popa, col. 6, lines 37-38, communications protocol, TCP/IP).

With respect to **claim 3**, Popa teaches the method of claim 1 wherein the preference is a user preference (Popa, col. 5, lines 59-61, and line 66 to col. 6 line 6, noted that user selects the size and resolution of the image, and this image formation is sent as a request over the communication network to the server).

With respect to **claim 4**, Popa teaches the method of claim 3 wherein the user preference defines at least one of an image quality (Popa, col. 6, lines 1-6, image resolution) and a latency.

With respect to **claim 5**, Popa teaches the method of claim 3 wherein the user preference defines at least one of a CPU usage and a fidelity (Popa, col. 6, lines 1-6, image resolution).

With respect to **claim 9**, Popa, teaches the method of claim 1 further comprising selecting the preference for the shared application (Popa, col. 5, lines 59-61, and line 66 to col. 6 line 6, noted that user selects the size and resolution of the image).

With respect to **claim 15**, Popa teaches an apparatus for use in configuring and dynamically adapting an application sharing system having a plurality of software components, the apparatus comprising:

means for determining a preference for a shared application (Popa, col. 5, lines 59-61, and line 66 to col. 6 line 6, noted that user selects the size and resolution of the image);

means for monitoring a feedback from one of the software components (Popa, col. 5, lines 50-55, and col. 6, lines 7-20, noted that the server application monitors the request message from the client, and the preference of the image size and resolution picked by the user); and

means for configuring one of the software components in response to the preference and the feedback (Popa col. 6, lines 14-30, noted that based on the alteration of the user's choice, server application configures its setting by transferring the difference between the high resolution image and the original image).

With respect to **claim 16** the limitations of this claim are substantially the same as those in claim 3. Therefore the same rationale for rejecting claim 3 is used to reject claim 16. By this rationale **claim 16** is rejected.

7. Claims 6-8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Popa (Patent no.: US 6,006,231)** in view of **Bertram et al. (PGPUB: US 2002/0156884 A1)** and further in view of **Boston et al. (Publication no.: US 2004/0101272 A1)**.

With respect to **claim 6**, the combined method of Popa-Bertam teaches a server API contains a graphical user interface specific functions designed for the development of the image application (Popa, Col. 7, lines 19-25). But they do not explicitly teach a method of allowing an administrator to set the administrator preference.

In the same field of endeavor, Boston teaches a method of allowing an administrator to set the administrator preference (Boston page 4, paragraph 36, noted the administrative user can edit the privilege levels and profiles of other users.).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of allowing an administrator to set the administrative preference as taught by Boston through the server API GUI provided in the combined method of Popa-Bertam's invention with motivation being that it provides administrator the privilege in editing the profiles of other users (Boston page 4, paragraphs 36 and 38).

With respect to **claim 7**, the combined method of Popa-Bertam teaches all the claimed limitations except that they do not explicitly teach a maximum data rate.

In the same field of endeavor, Boston teaches a data rate that each channel can support (Boston, page 9, paragraph 0079).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the use of the data rate transmission as taught by Boston in the combined method of Popa-Bertam's invention as the condition in limiting the selection of the user's preference in selecting the images. The motivation to combine this feature is to prevent the over use of bandwidth by all the users simultaneously.

With respect to **claim 8**, the combined method of Popa-Bertam teaches a method of limiting the selection of a user preference according to an image compression type (Popa, col. 6, lines 2-4, noted that predefined options). However, they

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do not explicitly teach a method of allowing an administrator to set the administrative preference in limiting the selection.

In the same field of endeavor, Boston teaches a method of allowing an administrator to set the administrator preference (Boston page 4, paragraph 36, noted the administrative user can edit the privilege levels and profiles of other users.).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of allowing an administrator to set the administrative preference as taught by Boston to limit the selection of user preference in the combined method of Popa-Bertam's invention with motivation being that it provides administrator the privilege in editing the profiles of other users (Boston page 4, paragraphs 36 and 38).

With respect to **claim 17** the limitations of this claim are substantially the same as those in claim 6. Therefore the same rationale for rejecting claim 6 is used to reject claim 17. By this rationale **claim 17** is rejected.

Response to Arguments

8. Applicant's arguments filed 07/09/2008 have been fully considered but they are not persuasive.

9. After carefully reviewing the Applicant's remarks, the following is a list of Applicant's main concerns on the previous Office Action:

- a. On page 4 of Applicant's remark, Applicant argues that "a system that automatically performs an act is not monitoring a feedback. Simpson therefore

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fails to teach or suggest the Applicant's claimed step of "monitoring a feedback generated by one of the system components".

b. On page 5 of Applicant's remark, Applicant argues that "Bertram teaches performance monitoring. CPU performance is monitored and displayed. There is no suggestion in Bertram that the monitoring should be fed back to the system for configuration of a component. Thus Popa and Bertram, taken alone or in any combination, fail to teach or suggest the Applicants' claimed step of configuring one of the system components in response to the determined preference and the monitored feedback".

10. In response to applicant's argument **a**, the examiner respectfully disagrees. It appears that Applicant has a specific meaning for the term "monitoring a feedback", which has not been included in the claims as presented. Therefore, the claims are interpreted by the examiner as broadly as reasonable in light of the specification. The presently recited claim does not explicitly specify which system does the monitoring. In addition, "*a feedback*" recited in the claim can be any arbitrarily feedback that is being generated by a system component. In the case of Simpson, the examiner asserts that the monitoring is done by the UNIX system, and a feedback is also generated by at least in part of the UNIX system; the examiner substantially equates the feedback with the act of UNIX system in creating and storing a target image of the requested print job to a storage location uniquely associated with the requesting-user (Simpson: page 4, paragraph 49).

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11. In response to applicant's argument **b**, the examiner respectfully disagrees. It appears that Applicant has a specific meaning for the term "monitoring a feedback", which has not been included in the claims as presented. Therefore, the claims are interpreted by the examiner as broadly as reasonable in light of the specification. The presently recited claim does not explicitly specify which system does the monitoring. In addition, "*a feedback*" recited in the claim can be any arbitrarily feedback that is being generated by a system component. In the instant case, Bertram teaches monitoring CPU, disk, memory and network performance (Bertram: page 4, paragraphs 27-28). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of monitoring CPU, disk, memory and network performance as taught by Bertram *in the server application* of Popa in order for the server to configure and allocate resources to the clients accordingly.

12. In addition, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

13. In addition, the Supreme Court has held that "a patent for a combination which only unites old elements with no change in their respective functions...obviously withdraws what is already known into the field of its monopoly and diminishes resources available to skillful men...The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."

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KSR Int'l Co. v. Teleflex Inc., 2007 U.S. LEXIS 4745, (U.S. 2007). Furthermore, "Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle...the fact that a combination was obvious to try might show that it was obvious under section 103." *KSR Int'l Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745, (U.S. 2007).

14. When a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *Sakraida v. AG Pro, Inc.*, 425 U.S. 273 (1976).

15. Applicant has had an opportunity to amend the claimed subject matter, and has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111.

16. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably

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possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

17. Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly defines the claimed invention.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Liu whose telephone number is (571) 270-1447.

The examiner can normally be reached on Monday - Friday, 7:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L./
/Lin Liu/

Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145